IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.10790 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JIVIBEN JIVABHAI SHIYAL

Versus

STATE OF GUJARAT

Appearance:

MR SHAKTISINH GOHIL for Petitioner No. 1

MR NAGESH SOOD, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 03/09/2004

ORAL JUDGEMENT

RULE. Mr.Nagesh Sood, learned AGP, appears and waives service of rule on behalf of the respondents. With the consent of the respective parties and looking to the urgency, matter is taken up for final hearing today.

2. This petition has been filed by the President of Porbandar Municipality for an appropriate writ, order or direction by quashing and setting aside the communication dated 24-08-2004 (Annexure-A to the petition) issued by the State Government i.e. Urban Development and Urban Housing Department by which, according to the petitioner, the Collector, Porbandar is directed to organize the Lok Mela commencing from 06-09-2004 on the eve of Janmashtami

festival.

3. Mr.Gohil, learned advocate for the petitioner, has submitted that under Section 91 of the Gujarat Municipalities Act, 1963 ('the Act' for short) it is for the Municipality to organize the Lok Mela/Fun Fair, etc. and the Collector has no jurisdiction and/or authority to organize the Lok Mela. Therefore, the direction issued by the State Government dated 24-08-2004 is contrary to Section 91 of the Act. He has further submitted that in fact the Collector, Porbandar vide communication dated 18-08-2004 has allowed the petitioner - Municipality to organize the Lok Mela / Fun Fair as according to her also, under Section 91 of the Act, the powers are with the Municipality. However, on the basis of the communication/direction dated 24-08-2004, the Collector, Porbandar would be organizing the Lok Mela/Fun Fair. It is also further submitted on behalf of the petitioner that in fact on the basis of the communication dated 18-08-2004 the Municipality has already arranged for the same and incurred the expenses. It is also further submitted on behalf of the petitioner that in fact the Collector, Porbandar is one of the members of the Advisory Committee of the Lok Mela and even other government officials are also in various committees. It is further submitted on behalf of the petitioner that on the basis of the communication/direction dated 24-08-2004 if the Collector organizes the Lok Mela / Fun Fair then it will be very difficult for the Municipality to meet with the situation where the Municipality has incurred expenses in connection with the Lok Mela / Fun Fair and more particularly in view of the fact that pursuant to the communication dated 18-08-2004 the Municipality has already taken steps for the purpose of organizing the Lok Mela / Fun Fair and there will be so many other consequential problems.

4. In response to the notice issued by this Court, Mr.Nagesh Sood, learned AGP, appears on behalf of the respondents i.e. State Government as well as the Collector. Mr.Sood, under instruction from Ms.Geeta Mehta, Dy. Secretary, Urban Development and Urban Housing Department, makes a statement that in fact the communication dated 24-08-2004 is not the direction issued by the State Government directing the Collector, Porbandar to organize the Lok Mela / Fun Fair. It is only an opinion given by the State Government. Mr.Sood, on behalf of the Collector, states that in fact considering the fact that since last three years the Lok Mela / Fun Fair was being organized by the Collector, this year also she sought an opinion from the State Government and accordingly the State Government has given

an opinion vide communication dated 24-08-2004. In that view of the matter the communication dated 24-08-2004 is not to be treated as direction to the Collector, Porbandar to organize the Lok Mela / Fun Fair.

5. In that view of the matter and in view of the communication dated 18-08-2004 by the Collector, Porbandar to the President of the Porbandar Municipality allowing the Porbandar Municipality to organize the Lok Mela / Fun Fair as according to her also, under Section 91 of the Act, it is for the Municipality to organize the Lok Mela / Fun Fair, the Porbandar - Municipality is allowed to organize the Lok Mela / Fun Fair on the basis of the communication dated 18-08-2004 (Annexure-B to the petition) of the Collector, Porbandar more particularly in view of the fact that so far as the Collector, Porbandar is concerned, she is one of the members of the Advisory Committee of the Sanskrutik Lok Mela, 2004.

6. In view of the above, the petition is allowed. Rule is made absolute to the aforesaid extent. No order as to costs. Direct service permitted.

Sd/-

[M.R.SHAH, J]

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'Bhavesh'